Antoine D. Johnson, MD
P.O. Box #561
Aberdeen, Washington 98520
(360) 500-0122

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

AT SEATTLE

UNITED STATES PROBATION AND PRETRIAL SERVICES (Custodian),
Respondent
v.
ANTOINE D. JOHNSON, MD,
Petitioner.

3:21-cv-05125 -RJB-DWC

Declaration in support of Petition for Writ of Habeas Corpus (28 USC 2241 & LCR 100(d)); and, Notice of Related/Pending Cases (LCR 3(g)&(h)).

I SWEAR THUSLY:

Attachment 'B' is a Judge Lasnik ORDER from the underlying criminal case. (No. *3:09-cr-05703-RBL*: Dkt. #395). In that ORDER Judge Lasnik identified the Defendants' argument:

> "Dr. Johnson and Ms. Johnson argue that the Court committed manifest error in its ruling on June 21, 2011 (dkt. #387)."
> [Dkt. #395: p. 1(lns. 25-26)].

Judge Lasnik found Defendants' request for reconsideration, was "premature." (Id. @ 23). He expressed:

> "Defendants have failed to demonstrate, by legal authority or otherwise, that the Court's ruling was manifest error."
> [Dkt. #395: p. 4(lns. 7-8)].

Judge Lasnik instructed Defendants to bring "new facts that warrant reconsideration" to him when such facts are identified. (Id. @ p.1(lns. 23-24).

For "proper legal authority regarding waiver of timeliness" (ibid.); recall, in *McQuiggen v. Perkins*, 133 S.Ct. 1924, 1926 (2013), the Supreme Court said:

> "The gateway should open only when a petition presents 'evidence of innocence so strong that a court cannot have confidence in the outcome of the trial unless the court is also satisfied that the trial was free of nonharmless constitutional error.'"
>
> [Id. at 1936].

The 2017 update of Federal regulatory law - i.e., "holds itself out" - is strong evidence of innocence, and implicates violation of the equal protection component of the Due Process Clause[1]. (See Attachment 'A')[2]. Indeed, the 2017 *established* definition of "holds itself out" should compel Judge Lasnik to change his June 21, 2011 "holds itself out" ruling[3].

Thus, I request Judge Lasnik consider SAMHSA's 2017 updated/established "holds itself out" definition in Attachment 'A,' because Judge Lasnik is familiar with the claim of manifest error; and, gave direction in Document #395, to "bring the request with proper legal authority … at that time." (Dkt. #395 @ p.1: ln. 24).

Dated this 8th day of February, 2020.

Respectfully submitted by,

Antoine D. Johnson, MD

[1] "[T]here is an equal protection component of the Due Process Clause of the Fifth Amendment which applies to the federal government." (*High Tech Gays v. Defense Industrial Security Clearance Office*, 895 F.2d 563, 570 (9th Cir. 1990)).

[2] Attachment 'A' is a true and correct copy of a Substance Abuse and Mental Health Services Administration (SAMHSA), document. It can be accessed at C:/Users/Owner/Downloads/42-CFR-Part-Standards-Comparison%20(4).pdf.

[3] Precedent foreclosed the instant actual innocence claim when I brought my first § 2255 motion in the year 2014. (See *Stephens v. Herrera*, 464 F.3d 895 (9th Cir. 2006) & *Harrison v. Ollison, 519 F.3d 952 (9th Cir. 2008)*- The 2017 updated definition of holds itself out does "materially vary from the statutory construction set forth," by Judge Lasnik on June 21, 2011. (See id. @ 960).